

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 120 and 120.3;
Repeal Section 120.01;
Add Sections 120.1 and 120.2
Title 14, California Code of Regulations (CCR)
Re: Prawn and Shrimp Trawling

- I. Date of Initial Statement of Reasons: April 11, 2008
- II. Date of Pre-Adoption Statement of Reasons: May 9, 2008
- III. Date of Final Statement of Reasons: October 8, 2008
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: April 11, 2008
Location: Bodega Bay, CA
 - (b) Discussion Hearing: Date: May 9, 2008
Location: Monterey, CA
 - (c) Adoption Hearing: Date: June 27, 2008
Location: Upland, CA
- V. Update:

Three non-substantive modifications were made to the originally proposed language of the Initial Statement of Reasons.

The proposed language of subsections 120.2(d) and 120.2(e), regarding pink shrimp permit renewal and transfer provisions, each contained an incorrect reference to Section 120.01, a section which is proposed to be repealed by this action and relocated to Section 120.2. The correct references to Section 120.2 are included in the proposed regulatory text. A typographic error in proposed Subsection 120(b) was also corrected.

Action Taken

At the June 27th adoption hearing, the Commission took regulatory action to approve all proposed changes.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

At the Commission's June 27, 2008 adoption hearing, Mike McCorkle of the Southern California Trawlers Association spoke in support of the proposed changes.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No reasonable alternatives were identified.

(b) No Change Alternative:

If the proposed amendments are not adopted, prawn and shrimp trawling areas defined in regulation will continue to be inconsistent with statutorily-established fishing areas specified in Section 8842 of the Fish and Game Code. If the changes to regulations for organization and clarity are not made, trawl fishermen, Department staff, and the public will continue to have difficulty interpreting and enforcing the provisions.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The changes are needed for clarity and for consistency with new statutory provisions.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

1. Amendments to Section 120, Title 14, CCR, Re: Prawn and Shrimp

Trawling. Considerable substantive and organizational changes to this Section are proposed to update the language so it specifies the current requirements for commercial prawn and shrimp trawling. This Section of Title 14 was established in 1976, and has been amended several times since 2003 in various regulatory actions that were piecemeal in nature. Due to numerous changes to Fish and Game Code statutes and regulation sections that govern both trawl fishing activity and requirements specific to a particular prawn or shrimp fishery, the regulations of Section 120 are now antiquated and must be updated to specify and consolidate the current requirements that apply to all prawn and shrimp trawling off California.

Section 120 would be renamed to “Prawn or Shrimp Trawling - General Provisions” to make clear that the regulations in the Section apply generally, and are enacted pursuant to the Fish and Game Commission’s expanded regulatory authority over bottom trawling for prawns and shrimp provided in Section 8841 of the Fish and Game Code. Regulations in Section 120 which pertain exclusively to the pink shrimp trawl fishery would be removed and relocated either to Section 120.1, regarding pink shrimp trawling, or to Section 120.2, regarding pink shrimp trawl permits.

The following specific modifications, deletions, and additions to Section 120 are proposed:

A. General Provisions. Presently, the Department issues fishery-specific commercial fishing permits for northern pink shrimp, southern pink shrimp, and golden and ridgeback prawn, and the general regulations of this Section would apply to all of these fisheries. The regulations would make clear that prawns and shrimp may only be taken by trawl nets for commercial purposes pursuant to Fish and Game Code statutes and sections 120 through 120.3 of Title 14, and under authority of one or more of the aforementioned commercial fishing permits. Take of spot prawns would continue to be prohibited using trawl nets except as specified when incidental to other trawl fishing activity.

B. Fishing Areas. Regulations in sections 120, 120.01 and 120.3 presently specify trawl areas or zones that are open and closed to trawl fishing for one or more species of shrimp or prawns. These regulations would be repealed, and language would be added to specify that trawling for shrimp or prawns is allowed only in those waters authorized by Section 8842 of the Fish and Game Code and not otherwise prohibited by other state or federal statutes or regulations.

The Commission did not make the finding required by subsection 8842(d) of the Fish and Game Code which would have allowed continued pink shrimp trawl

fishing in the area two to three miles offshore between False Cape and Point Reyes; therefore, this area closed to pink shrimp trawl fishing on January 1, 2008. The proposed regulations reflect this statutory change.

C. Net Specifications. Present regulations of Section 120 would be updated to reflect that the required net to be used for the capture of shrimp or prawns is an otter trawl, and that beam trawls are no longer authorized (pursuant to Section 8830 of the Fish and Game Code). Additionally, regulations defining the requirement for Bycatch Reduction Devices (BRDs) in the pink shrimp fishery would be removed from Section 120 and relocated to Section 120.1, which would specify regulations that pertain exclusively to pink shrimp fishing activities.

The language of existing subsections 120(g)(2) and (3) and 120.3 (f) would be combined and re-drafted to clarify that while prawn or shrimp trawling, no other fishing net or web, the meshes of which are less than that prescribed in these regulations, may be possessed on the vessel.

D. Observers and Inspections. Regulations would be updated and consolidated to make clear that all shrimp and prawn gear is subject to inspection, and observation of fishing activities aboard a permittee's boat by the Department or its representative is authorized at any time pursuant to Section 105.5, Title 14, CCR. Additionally, pursuant to Fish and Game Code subdivision 8841(d), any vessel fishing for prawns or shrimp permitted by California is subject to the requirements and policies of the federal groundfish observer program.

E. Incidental Catch Provisions. Existing regulations in subsections 120(h) and 120.3(g) specify provisions that allow for take of fish at prescribed limited levels incidental to a target trawl fishery. However, historically these various regulations have not been able to, nor can they currently, keep pace with changes to authorized limits on west coast groundfish established in federal regulations. The existing regulatory language is confusing in light of these other rules and has prompted numerous questions by both fishing industry members and Department enforcement staff. Additionally, changes to incidental catch provisions for spot prawn, a species for which take using trawl gear has been prohibited since 2003, are needed. Existing regulations which still provide for incidental catch in the directed spot prawn fishery are no longer necessary or appropriate now that this trawl fishery has been discontinued.

The revised incidental catch regulations are proposed to specify the following allowances and restrictions on specific types of catch that is taken incidentally to directed trawling activities:

(1) Finfish. Limits on the incidental take of west coast groundfish species would be those specified in federal regulations of Title 50 CFR Part 660, and

which apply to state-managed trawl fisheries, including prawn or shrimp trawl fisheries, pursuant to Section 189, Title 14, CCR. Salmon may be taken and possessed incidentally to prawn or shrimp trawl fishing activities subject to sections 8210.2 to 8226, and 8230 to 8237, inclusive, of the Fish and Game Code.

(2) Sea Cucumbers. Any amount of sea cucumbers taken incidentally while prawn or shrimp trawling may be possessed if the owner or operator of the vessel possesses a permit to take sea cucumbers pursuant to Section 8405 of the Fish and Game Code.

(3) Spot prawns. Spot prawns would continue to be prohibited as incidental catch in the pink shrimp fishery. Trawl loads of ridgeback and golden prawns which incidentally take spot prawn could not contain more than 50 pounds without restriction or 15 percent, by weight, of spot prawns. Trawl loads of finfish which incidentally take spot prawn could not contain more than 50 pounds without restriction or 15 percent, by weight, of spot prawns.

F. Records. Each prawn or shrimp trawl permittee, or the operator of a permitted vessel, would continue to be required to complete and submit logbooks of fishing activity.

G. Permit Revocation and Violations. Regulations specifying provisions for permit revocation and violations of prawn and shrimp trawl permit conditions would be updated to provide Department enforcement officers, License and Revenue Branch and the Commission with increased flexibility relative to penalties for violations. Regulations would allow, pursuant to Fish and Game Code subdivision 1052(b), any prawn or shrimp trawl permit to be revoked if the applicant or permittee submits false information for the purposes of obtaining or renewing a permit. Additionally, any prawn or shrimp trawl permit may be suspended, revoked or cancelled by the Commission pursuant to subdivision 7857(b) of the Fish and Game Code, upon notice by the Department of a violation by a permit holder, or any person acting under authority of his or her permit, of provisions of the Fish and Game Code or regulations of the Fish and Game Commission relating to shrimp, prawns, trawl gear, and times or areas closed to fishing. Any prawn or shrimp trawl permittee would also be liable for any violations committed by him or her of provisions of the Fish and Game Code or regulations of the Fish and Game Commission relating to shrimp, prawns, trawl gear, and times or areas closed to fishing. The permit holder would also be liable for violations committed by any other person operating under the authority of his or her permit. Additionally, any such other person would be liable for his or her own violations.

H. Deletion of Reference to Cowcod Closure Areas - Existing subsection 120(d) prohibits prawn and shrimp trawling in the cowcod closure areas. This regulation was added at a time when spot prawn trawling was still authorized by the Commission, and is no longer necessary to be included in state regulations

defining prawn and shrimp trawling areas based on changes in management authorities. NOAA Fisheries now prescribes rules for non-groundfish trawl fisheries using its regulatory authority over west coast groundfish, which include California's prawn and shrimp trawl fisheries. These federal rules apply in waters 3-200 miles from shore, and California conforms to these rules for state waters per Section 189 of Title 14. Federal regulations currently prohibit prawn and shrimp trawl activities in the cowcod areas, which exist primarily in federal waters off southern California. Additionally, federal groundfish regulations prescribe not only closed areas, but also seasons, depth constraints and bycatch limits for California's non-groundfish trawl fisheries.

I. Deletion of Reference to Permits to Transport Nets Through Closed Areas

– Existing text of subsections 120(g)(1) and (g)(6) refer to a permit which the Department may issue to allow for transport of prawn or shrimp trawl nets through closed areas. This language was likely established many years ago prior to the closure of most state waters to trawling, when fewer enforcement tools were available to officers. The Department presently does not issue such transit permits and does not intend to develop such a permit program.

2. Add Section 120.1, Title 14, CCR, Re: Pink Shrimp Trawling.

Present regulations of Section 120.01, which is titled "Pink Shrimp Trawling," instead actually specify provisions which pertain to northern and southern pink shrimp permits. That Section would be repealed, and Section 120.1 would be added to include only those regulatory provisions that apply exclusively to pink shrimp trawl fishing activity. Most of the content of the regulations that would be added into Section 120.1 is presently found throughout the existing language of Section 120, and would be relocated to this stand-alone section to improve organizational clarity.

A. Permit Required. Pink shrimp trawl permits would continue to be required, but would be issued pursuant to Section 120.2 rather than Section 120, as previously described.

B. Season. The pink shrimp commercial fishing season would continue to be April 1 through October 31.

C. Bycatch Reduction Device (BRD) Required. Regulations would continue to specify that all pink shrimp trawlers must be equipped with and use an approved BRD in pink shrimp fishing operations anywhere off California. Approved BRDs would continue to include the Rigid Grate (such as the Nordmore Grate), the Soft Panel and Fisheye Excluders, and the design specifications detailed in current regulations would remain. Language would be added to make clear that the rigid grate may be hinged to facilitate rolling over a net reel. Regulations which previously allowed for the Department's Marine Regional Manager to issue

experimental BRD permits meeting certain design criteria would be repealed, however, regulations would instead provide that upon approval by the Commission, an experimental gear permit could be issued by the Department for purposes of testing the effectiveness of new or improved BRD designs pursuant to Fish and Game Code Section 8606.

Current BRD regulations that allow for dismantling of BRDs while fishing to perform tests on the escapement of fish and loss of prawns during certain times of day would be repealed, as the three authorized types of BRDs have already undergone extensive performance testing in other states. Data from these studies have already been analyzed and applied toward development of BRD regulations at both the state and federal levels.

D. Net Removal. Regulations prohibiting removal of shrimp trawl nets from the vessel prior to the offloading of pink shrimp would be maintained.

E. Maximum Count per Pound. Regulations prescribing a maximum number of pink shrimp per pound, a rule that is similar to a minimum size limit, would be modified slightly in keeping with the intent of the provision. No vessel would be authorized to land a load of pink shrimp having an average count greater than 160 shrimp per pound.

3. Content of Existing Section 120.01, Title 14, CCR, Re: Pink Shrimp Trawling, Would be Repealed and Relocated to New Section 120.2, and Renamed.

Present regulations of Section 120.01 pertain to northern and southern pink shrimp permits, and include permit issuance provisions, vessel length endorsements, permit renewal provisions, transfers, appeals, fees, and capacity goals. These regulations would remain largely intact and relocated to new Section 120.2, with the following proposed changes:

A. Name Change. The name of the Section would be changed from “Pink Shrimp Trawling” to “Pink Shrimp Trawl Permits” to more accurately reflect the content of the regulations within the Section.

B. Permit Renewal and Appeal Provisions. Existing Northern Pink Shrimp Permit provisions would be amended to conform to new specifications in Section 7852.2 of the Fish and Game Code, regarding renewal late fees, late fee deadlines, and appeal provisions, as established by AB 1144 (Ch. 279, Stats. 2007).

New language in Section 7852.2 of the Fish and Game Code, effective April 1, 2008, provides as follows:

Notwithstanding any other provision of law, a commercial fishing license, stamp, permit, or other entitlement for which there is a renewal deadline shall not be renewed after that deadline, except as follows:

(a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:

(1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).

(2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).

(3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).

(b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713.

(c) The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

(d) An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a).

The updated permit regulations would specify that applicants for northern pink shrimp trawl permits must have held a valid northern pink shrimp trawl permit in the immediately preceding permit year and that all applications for northern pink shrimp trawl permit renewal shall be received by the Department or, if mailed, postmarked not later than April 30 each year. Late fees, late fee deadlines, and late renewal appeal provisions for Northern Pink Shrimp Trawl Permits would be those specified in Fish and Game Code Section 7852.2.

4. Changes to Section 120.3, Title 14, CCR, Re: Golden, Spot and Ridgeback Prawn Trawling for Clarity and Improved Organization.

Much of the existing content of Section 120.3, pertaining to golden and ridgeback permits and fishing would be consolidated into the general provisions described in Section 120 above, and therefore is proposed for removal from this Section. Regulations defining fishing areas are no longer consistent with prawn and shrimp trawl fishing areas authorized pursuant to Fish and Game Code Section 8842, and would be eliminated under the proposed changes.

The scientific name for ridgeback prawn, *Sicyonia ingentis*, is proposed for correction, as the regulations presently refer to the incorrect genus for this species.

Permits to use or possess trawl nets for the taking of golden prawns and ridgeback prawns in ocean waters would continue to be required by this Section. Take of spot prawn under authority of this permit would continue to be prohibited, except for authorized incidental catches. Permit applicants would continue to be required to be licensed commercial fishermen and operators of currently registered commercial fishing vessels.

Regulations would be reconfigured to make clear that trawling for ridgeback prawns is prohibited from June 1 through September 30. Golden and ridgeback trawl gear specifications, including minimum mesh size requirements, would remain intact in this Section under the proposed amendments.

Action Taken

At the June 27th adoption hearing, the Commission took regulatory action to approve all proposed changes.

Three non-substantive modifications were made to the originally proposed language of the Initial Statement of Reasons.

The proposed language of subsections 120.2(d) and 120.2(e), regarding pink shrimp permit renewal and transfer provisions, each contained an incorrect reference to Section 120.01, a section which is proposed to be repealed by this action and relocated to Section 120.2. The correct references to Section 120.2 are included in the proposed regulatory text. A typographic error in proposed Subsection 120(b) was also corrected.